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COURT OF APPEAL - FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re DARIUS WILLIAMSON

on

Habeas Corpus.

D043654

(San Diego County  
Super. Ct. No. HCD17468)

APPEAL from an order of the Superior Court of San Diego County, Ronald Domnitz, Judge. Affirmed in part, reversed in part and remanded with directions.

Respondent Warden Robert J. Hernandez<sup>1</sup> appeals a trial court order allowing incarcerated petitioner Darius Williamson contact and family visits with his wife under the same terms and conditions as other inmates similarly situated, without considering a 1995 arrest report or 1996 serious prison rule violation. He contends that in denying family visits, consideration of Williamson's 1996 rule violation was proper under current

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<sup>1</sup> Robert J. Hernandez is the warden of Richard J. Donovan Correctional Facility (RJD) in which petitioner Darius Williamson is incarcerated. He is the correct respondent in a petition for writ of habeas corpus. Prison officials above the level of

regulations and was not barred by collateral estoppel. We conclude that Williamson's challenge to the current family visit regulations is premature and must be raised first in the trial court, and collateral estoppel does not bar consideration of the 1996 rule violation. We reverse the order to the extent it declared consideration of the 1996 rule violation was barred by collateral estoppel, affirm it in all other respects, and remand with directions.

### FACTS AND PROCEDURAL BACKGROUND

In 1996, Williamson, then an inmate at the California Men's Colony (CMC) in San Luis Obispo County, was denied overnight family visiting and contact visiting privileges.<sup>2</sup> The denial was based on a 1995 arrest report and a March 1996 serious prison rule violation for exposing himself to his wife. In April 1999 Williamson petitioned the San Luis Obispo Superior Court to reinstate these visits with his wife. The court noted the return to the petition on behalf of the warden at CMC did not rebut evidence that Williamson's wife (1) admitted, under oath, lying to police about the charges resulting in the 1995 arrest; and (2) wrote a letter characterizing the 1996 rule violation as "excessive touching."

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Sergeant or Parole Agent II may be authorized to determine visiting privileges. (Cal. Code Regs., tit. 15, § 3172.1, subd. (a).)

<sup>2</sup> Contact visits allow inmates to briefly touch their visitors. (Cal. Code Regs., tit. 15, § 3175, subds. (d), (e) & (f).) Family visits are overnight visits provided to eligible inmates and their immediate family members while considering prison security, space availability and other regulations. (Cal. Code Regs., tit. 15, § 3177.)

On April 26, 1999, the San Luis Obispo court granted Williamson relief and ordered CMC prison officials to "allow Williamson contact visits with his wife under the same terms and conditions as other inmates similarly situated." The court reasoned that because CMC officials did not rebut evidence that only "excessive touching" occurred, their rationale for denying visits was "all but destroy[ed]." Williamson's supervised contact visits were reinstated for six months.<sup>3</sup>

In April 2001 Williamson was transferred to Centinela State Prison. After reviewing the San Luis Obispo court order, officials at Centinela determined Williamson was eligible for contact visits, but ineligible for family visits. In March 2002 Williamson filed another petition in the San Luis Obispo Superior Court to restore his family visits. The petition was denied because Williamson had not exhausted administrative remedies. However, the court clarified that its April 1999 order was a ruling on the merits of Williamson's petition and the 1995 arrest report was not a valid basis for denying him family visits; the clarification did not mention the 1996 rule violation.

In April 2002 Williamson was transferred to RJD in San Diego County. RJD prison officials considered the 1995 arrest report and the 1996 rule violation in concluding Williamson was eligible for contact visits, but ineligible for family visits.

In July 2003, under new family visiting regulations, RJD officials determined Williamson was prohibited from participating in family visits based on his 1996 rule

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<sup>3</sup> In July 1999, Williamson challenged the six-month supervision period. The San Luis Obispo court denied his petition, concluding a period of supervision was reasonable. The order did not mention family visits or the 1996 rule violation.

violation and because there was no court order entitling him to this privilege. Williamson sought habeas corpus relief in the San Diego Superior Court. The court granted relief on the basis of collateral estoppel. The court concluded the San Luis Obispo court's April 1999 order was a determination that prison officials were collaterally estopped from considering either the 1995 arrest report or the 1996 rule violation in assessing eligibility for visits because CMC officials did not rebut an "excessive touching" characterization of the serious rule violation. Hernandez appeals the 2003 order directing RJD officials to allow Williamson family visits with his wife "under the same terms and conditions as other inmates similarly situated," without considering the 1995 arrest report or the 1996 rule violation.

## DISCUSSION

Hernandez contends the superior court's order was in error by excluding consideration of the 1996 rule violation under collateral estoppel because it has never been necessarily decided that the 1996 rule violation could not be considered in determining Williamson's eligibility for family visits. Hernandez does not contest the order to the extent it prohibits consideration of the 1995 arrest report.

### I

#### *Collateral Estoppel Does Not Apply to the 1996 Rule Violation*

This appeal questions whether collateral estoppel based on the San Luis Obispo Superior Court's April 1999 order was properly applied by the trial court to prohibit consideration of Williamson's 1996 rule violation in determining eligibility for family

visits. We review this question of law de novo, giving no deference to the trial court's ruling. (*Ghirardo v. Antonioli* (1994) 8 Cal.4th 791, 799.)

Collateral estoppel precludes litigation of an issue already decided in a previous proceeding. (*Teitelbaum Furs, Inc. v. Dominion Ins. Co., Ltd.* (1962) 58 Cal.2d 601, 604.) Collateral estoppel applies if: (1) the issue necessarily decided at the former proceeding is identical to the one sought to be precluded from relitigation; (2) the former proceeding resulted in a final decision on the merits; and (3) the party against whom preclusion is sought is the same as, or in privity with, the party to the former proceeding. (*People v. Sims* (1982) 32 Cal.3d 468, 484.) Hernandez concedes RJD officials are collaterally estopped from considering the 1995 arrest report in determining Williamson's visiting privileges. The issue here is whether consideration of the 1996 rule violation was necessarily decided in the April 1999 order.

The trial court determined that the 1996 rule violation was necessarily decided in the 1999 San Luis Obispo court order because CMC officials did not rebut material allegations characterizing the incident as merely excessive touching. To determine whether an issue has been necessarily decided in a court proceeding, courts generally look to whether the issue was "not 'entirely unnecessary' " to the judgment in the prior proceeding. (*Lucido v. Superior Court* (1990) 51 Cal.3d 335, 342; *Sims, supra*, 32 Cal.3d at pp. 484-485.) Here, there is no determination in any of the three orders<sup>4</sup> by the San

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<sup>4</sup> The April 1999 order, the July 1999 order upholding supervised visits and the 2002 order.

Luis Obispo court instructing prison officials to disregard the 1996 rule violation in assessing Williamson's eligibility for family visits. The April 1999 order determined only that the 1995 arrest report did not provide a valid basis for denying visitation privileges; it was silent on the 1996 rule violation except that it mentioned CMC officials did not rebut the excessive touching characterization of the violation. Because the 1996 rule violation was only briefly mentioned in the April 1999 order, we conclude there was not a determination on the merits that necessarily concluded the 1996 rule violation was an invalid basis for assessing Williamson's eligibility for family visits.

Williamson relies on *People v. Parham* (2003) 111 Cal.App.4th 1178, 1182 for the proposition that, "If the court decides the case on one issue, the remaining issues were ' "necessarily decided" ' if they were actually litigated and not ' "entirely unnecessary" ' to the case. [Citation]." *Parham* is not dispositive here. Although the 1996 rule violation was briefly mentioned in the April 1999 order, a decision that the 1996 rule violation could not be considered was not necessary to the decision that the 1995 arrest report could not be considered in denying family visits.

The 1996 rule violation was entirely unnecessary to the 1995 arrest report decision for several reasons. First, it had no relevance to the determination of whether the 1995 arrest report could be considered by RJD officials in denying Williamson family visits. Second, the order did not mention family visits. Third, the San Luis Obispo court did not discuss the 1996 rule violation while specifically prohibiting prison officials' consideration of the 1995 arrest report. Fourth, because the court was clear on its 1995

arrest report decision, the court likely would have expressed that the excessive touching characterization was intended as a final judgment on the merits in the April 1999 order had it intended the 1996 rule violation to be decided.

For these reasons, we decide the 1996 rule violation issue has not been necessarily decided by any previous order and RJD officials are not collaterally estopped from considering that violation in determining Williamson's visiting privileges.

## II

### *Issues May Not Be Raised For The First Time on Appeal*

Williamson raises two constitutional arguments in his respondents brief not raised in his petition before the superior court. First, he contends RJD officials violated state and federal ex post facto prohibitions by applying new regulations to behavior that occurred before their enactment. Second, he contends RJD's new family visitation regulation is facially unconstitutional because it does not provide notice of proscribed conduct. We conclude these contentions may not be raised in this appeal.

The Court of Appeal may refuse to issue a writ of habeas corpus when the issues should have first been raised in the trial court. (*In re Moss* (1985) 175 Cal.App.3d 913, 922, citing *In re Hillery* (1962) 202 Cal.App.2d 293, 294.) Here, there are no exceptional circumstances warranting review of the newly raised arguments in this court. If Williamson wishes to pursue these constitutional arguments, a petition should first be filed in the trial court.

## DISPOSITION

The matter is remanded with directions to strike the order's reference to the 1996 rule violation. In all other respects, the order is affirmed.

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McDONALD, J.

WE CONCUR:

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McCONNELL, P. J.

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HALLER, J.